

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 06-674
v.	:	DATE FILED: _____
KEVIN HERON	:	VIOLATIONS:
	:	18 U.S.C. § 371 (conspiracy to commit securities fraud - 1 count)
	:	15 U.S.C. §§ 78j(b), 78ff and 17 C.F.R. § 240.10b-5 (securities fraud-insider trading - 3 counts)
	:	Notice of forfeiture

SECOND SUPERSEDING INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

BACKGROUND

At all times relevant to this superseding indictment:

1. Defendant KEVIN HERON was an attorney and the general counsel of Amkor Technology, Inc. ("Amkor") from in or about 1994 until in or about March 2005. From 1998 through at least the end of 2004, HERON also acted as Amkor's chief compliance officer and was responsible for, among other things, enforcing Amkor's insider trading policy. HERON was also responsible for managing Amkor litigation and for communication of company information to the Amkor board of directors. HERON also served as Amkor's corporate secretary and was responsible for, among other things, preparing materials for board meetings, attending and preparing the minutes for board meetings and acting as custodian for the board

minutes. In performing his various duties, HERON was regularly in possession of material, non-public information concerning Amkor.

2. Amkor was one of the world's largest packager of semiconductors and was publicly traded under symbol "AMKR" on the Nasdaq National Market System ("NASDAQ"). Amkor maintained offices in West Chester, Pennsylvania and Chandler, Arizona. Defendant KEVIN HERON worked out of the West Chester, Pennsylvania location.

3. Since 1998, when Amkor became a public traded company, it has had an insider trading policy that prohibited employees of Amkor, including defendant KEVIN HERON, from trading in the company's stock while in possession of material, nonpublic information about the company. The policy also provided for specified blackout periods during which certain Amkor employees were prohibited from trading. Among the types of information the company policy deemed "material" included "financial results, known but unannounced future earnings or losses, [and] news of pending or proposed mergers or other acquisition[s]." The policy further provided that officers and directors of the company "should refrain from trading in the company's securities, even during the trading window," without first having defendant HERON review and approve the trades.

4. Stephen Sands, charged elsewhere, was employed as a salesperson for Neoware, Inc. ("Neoware"), a computer software company based in King of Prussia, Pennsylvania that is traded on the NASDAQ under symbol "NWRE." In that capacity, Sands had access to material, non-public information about Neoware, including pending corporate deals and financial performance. Neoware also had a policy which prohibited its employees from sharing material, non-public information with people outside of the company.

5. Defendant KEVIN HERON and Stephen Sands lived near each other in Phoenixville, Pennsylvania and were friends.

The SEC and the Securities Law

6. The United States Securities and Exchange Commission (the “SEC”) was an independent agency of the United States which was charged by law with the duty of protecting investors by regulating and monitoring, among other things, the purchase and sale of publicly traded securities. Among the national securities markets regulated by the SEC were the New York Stock Exchange and NASDAQ. The SEC places certain requirements, including public announcement of quarterly earnings, on publicly traded companies.

- a. The anti-fraud provisions of the federal securities laws, including Section 10b of the Exchange Act, codified at Title 15, United States Code, Section 78j(b), and Rule 10b-5 thereunder, codified at Title 17, Code of Federal Regulations, Section 240.10b-5, prohibited fraudulent activities in connection with the buying and selling of securities, including “insider trading.”
- b. “Insider trading” was generally defined as trading a security, in violation of a known duty of trust and confidence, on the basis of material, nonpublic information about a public company.
- c. Rule 10b5-1, codified at Title 17, Code of Federal Regulations, Section 240.10b5-1, effective October 23, 2000, provided that a purchase or sale of a security was made “on the basis of” material, non-public information when the person making the trade was

aware of the material, non-public information at the time of the trade.

- d. Rule 10b5-2, codified at Title 17, Code of Federal Regulations, Section 240.10b5-2, effective October 23, 2000, provided a non-exclusive definition of “duties of trust or confidence” for insider trading purposes. The definition included “[w]henever a person agrees to maintain information in confidence.”

THE CONSPIRACY

7. From at least on or about July 1, 2003 through in or October 2004, in the Eastern District of Pennsylvania, and elsewhere, defendant

KEVIN HERON

unlawfully, willfully and knowingly conspired and agreed with Stephen Sands to commit offenses against the United States, that is, to commit securities fraud in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

MANNER AND MEANS

8. It was a part of the conspiracy that defendant KEVIN HERON together with Stephen Sands, unlawfully, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and the facilities of national securities exchanges, would and did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and

omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon any person, in connection with the purchase and sale of a security, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

9. As detailed below, from at least on or about July 1, 2003 through at least on or about June 4, 2004, defendant KEVIN HERON and Stephen Sands exchanged information regarding their respective companies, including material, non-public information such as financial performance and pending corporate deals, that they relied upon in making securities transactions in Amkor and Neoware.

OVERT ACTS

In furtherance of the conspiracy, defendant KEVIN HERON along with Stephen Sands committed the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

1. From at least on or about February 25, 2004 to at least on or about March 25, 2004, defendant KEVIN HERON informed Stephen Sands that Amkor was in negotiations with IBM on an unannounced corporate deal that HERON expected to increase Amkor's stock value and sent emails about the deal to Sands, who owned shares of Amkor at the time.
2. Prior to the public announcement on or about April 26, 2004, Stephen Sands informed defendant KEVIN HERON that Neoware

had entered into the largest deal in the company's history with CVS Pharmacy ("CVS").

3. On or about March 31, 2004, defendant KEVIN HERON sent Sands an email stating that "the news must be leaking pal [sic] when do you announce [the CVS deal]." Sands responded that same day that he "was not sure- maybe end of April."
4. On or about April 1, 2004, Stephen Sands sent defendant KEVIN HERON an email informing him that Neoware was going to beat its quarterly goals and that there "will be a few announcements soon."
5. On or about April 1, 2004, Stephen Sands sent defendant KEVIN HERON an email stating that Neoware's "Q4 could be very big say no more."
6. On or about April 5, 2004, defendant KEVIN HERON informed Stephen Sands via email that he intended to purchase Neoware shares.
7. On or about April 6, 2004, defendant KEVIN HERON purchased approximately 3100 shares of Neoware.
8. On or about April 14, 2004, defendant KEVIN HERON purchased an additional 1900 shares of Neoware.

9. On or about April 14, 2004, defendant KEVIN HERON informed Stephen Sands via email that he had “made some acquisitions in nwre waiting for the news.”
10. On or about April 15, 2004, Stephen Sands informed defendant KEVIN HERON via email that Sands had restrictions on the number of shares that he could sell at any given time because his wife worked in the financial industry. Defendant HERON responded “so who policies [sic] this? How is anyone to know if you sell 1000 shares? I mean think about it, the market trades over a billion shares a day, who gives a rats [sic] ass if you sell 1000.”
11. On or about April 19, 2004, Stephen Sands informed defendant KEVIN HERON via email that Neoware “should be making it public soon that we have this CVS deal in the bag”
12. On or about April 21, 2004, defendant KEVIN HERON purchased approximately 3000 shares of Neoware.
13. On or about April 26, 2004, Stephen Sands informed defendant KEVIN HERON via email that Neoware’s “earnings released today I think not sure [sic] if anything will be said regarding CVS.”

14. On or about April 27, 2004, defendant KEVIN HERON asked Stephen Sands via email when Neoware was going to announce the “CVS deal.” Sands responded that the Neoware had announced a deal with a major drug chain, but did not identify CVS.

In violation of Title 18, United States Code, Section 371.

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

DEFENDANT KEVIN HERON'S UNLAWFUL TRADING

1. Paragraphs 1 through 6 and 8 and 9 of Count One are incorporated here.

_____2. As an officer of Amkor, defendant KEVIN HERON owed fiduciary and other duties to Amkor and its shareholders to abstain from trading in Amkor securities while in possession of material, non-public information concerning the company. In breach of those duties and for his own personal benefit, defendant HERON traded Amkor securities while in possession of material non-public information including, among other things, the company's financial condition, proposed mergers and/or acquisitions, and potential litigation exposure. Defendant HERON generally made these trades via the internet using his office computer to access his online personal brokerage account at BrownCo, an online brokerage service of J.P. Morgan Invest, LLC based in Boston, Massachusetts. Defendant HERON realized approximately \$282,862.00 in gains through profits and/or losses avoided through these trades.

3. Some of defendant KEVIN HERON's transactions involved Amkor common stock, while others involved Amkor options. An "option" is an instrument that gives the owner the right to buy or sell a specified number of shares of a specified stock at a certain price within a specified period. A "call" option allows the option holder to buy the underlying stock at a set price at any time up to the expiration date of the contract; a "put" option allows the option holder to sell the underlying stock at a set price at any time before the contract expires. An option is a security and is subject to the same regulatory scheme that governs trading in other

forms of securities.

THE SCHEME

4. From on or about October 15, 2003 to on or about October 17, 2003, in West Chester, Pennsylvania, in the Eastern District of Pennsylvania and elsewhere, defendant

KEVIN HERON

willfully, directly and indirectly, by the use of means and instrumentalities of interstate commerce and of the facilities of a national securities exchange, used and employed manipulative devices and contrivances in connection with the purchase and sale of securities, namely, Amkor stock, in contravention of the rules and regulation prescribed by the Securities and Exchange Commission, namely, 17 C.F.R. §240.10b-5, by (a) employing a device, scheme, and artifice to defraud and (b) engaging in acts, practices and courses of dealing which would and did operate as a fraud and deceit upon Amkor and its shareholders, and other members of the investing public, in connection with purchases/sales of Amkor securities.

MANNER AND MEANS

It was part of the scheme that:

5. Beginning on or about September 16, 2003, and continuing through on or about October 28, 2003, Amkor had instituted a blackout period that prohibited Amkor employees, including defendant KEVIN HERON, from trading in Amkor securities.

6. From on or about October 15, 2003 through on or about October 17, 2003, defendant KEVIN HERON purchased approximately 4,000 shares of Amkor stock through his online BrownCo account while aware of material, non-public information, including that Amkor would likely be releasing positive quarter earnings on October 27, 2003.

7. On October 27, 2003, Amkor released positive quarter earnings and Amkor's stock value immediately increased.

8. On or about November 3, 2003, defendant KEVIN HERON sold approximately 3,000 shares of his Amkor stock for a profit and realized a gain of approximately \$11,450.

In violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5.

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this superseding indictment:

1. Paragraphs 1 through 3 of Count Two are incorporated here.

THE SCHEME

2. From on or about April 1, 2004, to on or about April 30, 2004, in West Chester, Pennsylvania, in the Eastern District of Pennsylvania and elsewhere, defendant

KEVIN HERON

willfully, directly and indirectly, by the use of means and instrumentalities of interstate commerce and of the facilities of a national securities exchange, used and employed manipulative devices and contrivances in connection with the purchase and sale of securities, namely, Amkor stocks and options, in contravention of the rules and regulation prescribed by the Securities and Exchange Commission, namely, 17 C.F.R. §240.10b-5, by (a) employing a device, scheme, and artifice to defraud and (b) engaging in acts, practices and courses of dealing which would and did operate as a fraud and deceit upon Amkor and its shareholders, and other members of the investing public, in connection with purchases/sales of Amkor securities.

MANNER AND MEANS

It was part of the scheme that:

3. Beginning on or about March 16, 2004, and continuing through on or about April 27, 2004, Amkor had instituted a blackout period that prohibited Amkor employees, including defendant KEVIN HERON, from trading in Amkor securities.

4. From on or about April 1, 2004 through on or about April 26, 2004, defendant KEVIN HERON sold through internet transactions with his BrownCo account approximately 17,000 shares of Amkor stock and traded approximately 140 Amkor option contracts consistent with a bearish position (i.e., that the stock value would decrease), while aware of material non-public information, including that Amkor would be releasing negative quarter earnings on April 27, 2004 that would fail to meet previously issued guidance and analysts' expectations.

5. Following Amkor's public announcement of its first quarter earnings for 2004, Amkor's stock value decreased approximately thirty-two (32%) percent in one day.

6. As a result of these Amkor transactions, defendant KEVIN HERON realized a gain through profits and losses avoided totaling approximately \$141,540.

In violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5.

COUNT FOUR

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this superseding indictment:

1. Paragraphs 1 through 3 of Count Two are incorporated here.

THE SCHEME

2. From on or about May 20, 2004, to on or about July 28, 2004, in West Chester, Pennsylvania, in the Eastern District of Pennsylvania and elsewhere, defendant

KEVIN HERON

willfully, directly and indirectly, by the use of means and instrumentalities of interstate commerce and of the facilities of a national securities exchange, used and employed manipulative devices and contrivances in connection with the purchase and sale of securities, namely, Amkor stock and options, in contravention of the rules and regulation prescribed by the Securities and Exchange Commission, namely, 17 C.F.R. §240.10b-5, by (a) employing a device, scheme, and artifice to defraud and (b) engaging in acts, practices and courses of dealing which would and did operate as a fraud and deceit upon Amkor and its shareholders, and other members of the investing public, in connection with the following purchases/sales of Amkor securities.

MANNER AND MEANS

It was part of the scheme that:

3. Beginning on or about May 24, 2004, and continuing through on or about July 28, 2004, Amkor had instituted an unscheduled blackout period that prohibited Amkor employees, including defendant KEVIN HERON, from trading in Amkor securities.

4. From on or about May 20, 2004 through on or about July 28, 2004, defendant KEVIN HERON sold through internet transactions with his BrownCo account approximately 22,100 shares of Amkor stock and traded approximately 100 Amkor option contracts consistent with a bearish position (i.e., that the stock value would decrease), while aware of material, non-public information, including that Amkor's financial performance was poor, that Amkor was considering issuing, and ultimately did issue, on July 1, 2004, a pre-announcement stating the second quarter earnings would fall below market expectations. HERON was also aware that Amkor was in negotiations with Unitive, Inc. ("Unitive") for a joint business transaction that might not be positively perceived.

5. Following Amkor's July 1, 2004 pre-announcement, Amkor's stock value decreased approximately twenty-nine (29%) percent in one day.

6. On or about July 21, 2004, Amkor publicly announced the Unitive deal. Amkor's stock price fell immediately following the announcement.

7. As a result of these Amkor transactions, defendant KEVIN HERON realized a gain through profits and losses avoided totaling approximately \$129,872.

In violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5.

NOTICE OF FORFEITURE

THE GRAND JURY FURTHER CHARGES THAT:

1. As a result of the violations of Title 15, United States Code, Sections 78j(b), 78ff and Title 17 Code Federal Regulations § 240.10b-5 set forth in this indictment, defendant

KEVIN HERON

shall forfeit to the United States of America any property, real or personal, that constitutes or is derived from proceeds traceable to the commission of such offenses, including, but not limited to, the sum of \$282,862.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 28, United States Code, Section 2461(c), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 28, United States Code, Section 2461(c) and Title 18, United States Code, Section 981(a)(1)(C).

A TRUE BILL:

GRAND JURY FOREPERSON

**PATRICK L. MEEHAN
UNITED STATES ATTORNEY**